In the High Court of Judicature at Madras

Dated : 19..08..2006

C O R A M

The Honourable Mrs. Justice Prabha Sridevan

W.P. Nos.22161, 22215, 22820, 24502, 24629 & 24870 of 2006

Self Financing Private Teacher Training Institutes Association (Regd.), rep. by its Secretary S. Nicholson, No.241/5, Rohini Flats, 7th Avenue, Anna Nagar West, Chennai-101. .. Petitioners in W.P. No.22161 of 2006

Tamil Nadu Self Finance Colleges of Education Management Association (Regd.), Rep. by its Secretary S. Vijayakumar, Old No.7, New No.11, 3rd Cross Street, West C.I.T. Nagar, Chennai-35. .. Petitioners in W.P. No.22215 of 2006

Self-Financing Teacher Training Institutes Association (Regd.), rep. by its President A.K. Ramasamy, No.30, Bundar Street, Parrys, Chennai-1. .. Petitioners in W.P. No.22820 of 2006

All India Private Educational Institution Association (Regd.), rep. by its President, No.5, M.P. Avenue, Majestic Colony, Saligramam, Chennai-93. .. Petitioners in W.P. No.24502 of 2006

Tamil Nadu Private Self Financing D.T.Ed. and B.Ed. Colleges Management Association, rep. by its President Dr. A. Sheik Haneef, 178/73, Vellala Street, Ayanavaram, Chennai-23. .. Petitioners in W.P. No.24870 of 2006

All India Private Educational Institution Association (Regd. No.3822 of 2003), rep. by its President, No.5, M.P. Avenue, Majestic Colony, Saligramam, Chennai-93. .. Petitioners in W.P. No.24629 of 2006

Versus

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1. The State of Tamil Nadu, rep. by its
   Secretary to Government,
   School Education Department,
   Fort St. George, Chennai-9.

2. The Secretary to Government,
   Higher Education Department,
   Government of Tamil Nadu,
   Fort St. George, Chennai-9.

3. The National Council for Teacher Education,
   Rep. by its Member Secretary,
   Hans Bhavan, Wing II,
   New Delhi-110 002.

4. The Regional Director,
   National Council for Teacher Education,
   Southern Regional Committee,
   First Floor, C.S.D. Complex,
   H.M.T. Township, Bangalore-31.

5. The Director of Collegiate Education,
   Government of Tamil Nadu,
   D.P.I. Campus, Chennai-6.

6. The Director of Teacher Education,
   Research & Training, .. Respondents in W.P.
   Government of Tamil Nadu, Nos.22161, 22215,
   D.P.I. Campus, Chennai-6. 24502 & 24870 of 2006
   W.P.24629/06

1. The State of Tamil Nadu, rep. by its
   Secretary to Government,
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4. The Director of Collegiate Education,
Government of Tamil Nadu, .. Respondents in
D.P.I. Campus, Chennai-6. W.P. No.22820 of 2006

Prayer : Petitions filed under Article 226 of the Constitution of India respectively seeking -

a writ of certiorari calling for the records in respect of the impugned Government Order in G.O. Ms. No.90, School Education (U1) Department dated 21.6.2006 and the consequential Government Order in G.O. (1D) No.180, School Education (U1) Department dated 3.7.2006, both issued by the 1st respondent and quash the same as illegal, unconstitutional and void insofar as the members of the petitioner are concerned;

a writ of certiorari calling for the records in respect of the impugned Government Order in G.O. Ms. No.90, School Education (U1) Department dated 21.6.2006 issued by the 1st respondent and the consequential Government Order in D.O. Letter No.12271/E1/2006 dated 29.6.2006 issued by the 2nd respondent and quash the same as illegal, unconstitutional and void insofar as the members of the petitioner are concerned;

a writ of certiorari calling for the records in respect of the impugned Government Order in G.O. Ms. No.90, School Education (U1) Department dated 21.6.2006 and the consequential Government Order in G.O. (1D) No.180, School Education (U1) Department dated 3.7.2006 of the 1st respondent and quash the said Government Orders as illegal, unconstitutional and void insofar as the members of the petitioner are concerned;

a writ of certiorari calling for the records in respect of the impugned Government Order in G.O. Ms. No.90, School Education (U1) Department dated 21.6.2006 issued by the 1st respondent and the consequential Government Order in D.O. Letter No.12271/E1/2006 dated 29.6.2006 issued by the 2nd respondent and quash the same as illegal, unconstitutional and void insofar as the members of the petitioner are concerned;

a writ of certiorari calling for the records in respect of the impugned Government Order in G.O. Ms. No.90, School Education (U1) Department dated 21.6.2006 and the consequential Government Order in G.O. (1D) No.180, School Education (U1) Department dated 3.7.2006, both issued by the 1st respondent and quash the same as illegal, unconstitutional and void insofar as the members of the petitioner are concerned.

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For Petitioners in W.P. No.22161 of 2006 : Mr. N.R. Chandran, Senior Counsel for Mr. R. Suresh Kumar

For Petitioners in W.P. No.22215 of 2006 : Mr. R. Muthukumarasamy, Senior Counsel for Mr. R. Suresh Kumar

For Petitioners in W.P. No.22820 of 2006 : Mr. G. Masilamani, Senior Counsel for Mr. R. Suresh Kumar

For Petitioners in W.P. No.24502 2006 : Mr. P. Chandrasekar for M/s. Chandrasekar Associates

For Petitioners in W.P. No.24870 of 2006 : Mr. V. Sanjeevi

For Petitioner in W.P.24629/2006 : A.K. Nirmalanandan

For Respondents/ State Government : Mr. R. Viduthalai, Advocate General for Mr.M.Sekar, Spl. Govt. Pleader (Edn.)

For N.C.T.E. : Mr. S. Udayakumar, Sr. Central Govt. Standing Counsel

O R D E R

This is yet another tussle with regard to the demarcation of power in the field of education.

2. On 21.6.2006, the Government of Tamil Nadu issued a Government Order appointing a High Level Committee to enquire into the deficiencies in private Teacher Training Institutes and B.Ed. Colleges, and to find out if they possess the required infrastructural facilities and to file a report. The Chairman of the Committee is Thiru. K. Aludaiya Pillai, I.A.S. (Retired). The institutions which are subject of the G.O. are those institutions which have commenced functioning between the year 2001 and 2006, and the Annexure to the G.O. contains the list of all such institutions. On 29.6.2006, the second respondent addressed a letter to the fifth respondent inviting his attention to the aforesaid G.O. According to this communication,

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the second respondent was of the opinion that it will be impossible for the Committee to visit all the B.Ed. Colleges and therefore, it was decided to constitute a Three Member Committee, splitting the list of colleges regionwise and instructing the Joint Director of Collegiate Education to inspect the colleges regarding the availability of infrastructure and to submit a report. By the communication dated 3.7.2006, the institutes were divided regionwise. The scope of the enquiry was –

(a) to enquire whether all the institutions possess the required infrastructure facilitites;

(b) to find out whether the appointments of teachers and servants were approved or whether provisional approval was obtained;

(c) to find out if there are any defects, and how the defects could be removed;

(d) to make recommendations as to how permission should be granted to such institutions so that there would be room for complaints. The G.O. is extracted hereunder:

"தனியார் ஆசிரியர் பட்டயப் பயிற்சி நிலையங்கள் மற்றும் இளநிலை ஆசிரியர் பயிற்சி கல்லூரிகள் தொடங்கப்பட்டதில், நடைபெற்ற தவறுகளை விசாரணை செய்வதற்காக ஒரு விசாரணைக் குழு அமைத்து தவறுகள் கண்டுபிடிக்கப்பட வேண்டும் என்று அரசு கருதுகிறது.

2. எனவே இதற்காக திரு.கு.ஆளுடையபிள்ளை, இ.அ.ப.,(ஓய்வு) அவர்கள் தலைமையில் கீழ்கண்ட நபர்களை உறுப்பினர்களாகக் கொண்ட உயர்மட்ட விசாரணைக்குழு நியமிக்கப்படுகிறது –

1) திரு.கு.ஆளுடையபிள்ளை, இ.அ.ப.,(ஓய்வு) தலைவர்
முன்னாள் துணைவேந்தர்,
மதுரை காமராஜர் பல்கலைக் கழகம்

2) திரு.வா.அ.சிவஞானம், உறுப்பினர்
முன்னாள் பள்ளிக் கல்வி இயக்குநர்

3) திரு.டி.விக்டர், உறுப்பினர்
முன்னாள் கல்லூரிக் கல்வி இயக்குநர்

4) திரு.எஸ்.ஜெயச்சந்திர மோகன், உறுப்பினர்
முன்னாள் தலைமைப் பொறியாளர்,
பொதுப்பணித் துறை

5) முனைவர்.எஸ்.ஆறுமுகம் உறுப்பினர்

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கூடுதல் இயக்குநர்,
தொழில்நுட்பக் கல்வி இயக்ககம்

6) திரு.பி.மணி, இணை இயக்குநர் — உறுப்பினர்
பள்ளிக் கல்வி இயக்ககம் — செயலர்

3. விசாரணைக்குழுவின் ஆய்வு வரம்புகள் பின்வருமாறு –

(அ) 2001–2006 ஆம் ஆண்டு வரையிலும் துவக்கப்பட்ட தனியார் கல்வியியல் கல்லூரிகள் அவை துவக்கப்படும்போது தேசிய ஆசிரியர் கல்வி குழுமம் வரையரை செய்துள்ளபடி போதிய கட்டமைப்பு வசதிகள் கொண்டிருந்தனவா என்பதையும் முறையான விதிகளின் கீழ் ஆசிரியர்/பணியாளர் நியமனங்களுக்கான அங்கீகாரம் வழங்கப்பட்டிருந்தனவா என்பதையும், இல்லையெனில், இதற்கான நிபந்தனைகளுடன் கூடிய உரிய அனுமதி பெறப்பட்டதா என்பதையும் தற்போது அக்கல்லூரிகள் போதிய கட்டமைப்பு வசதிகளுடன் உள்ளனவா என்பதையும் பரிசீலுத்து இதில் எவ்வாறெல்லாம் தவறுகள் நடைபெற்றிருக்கக் கூடும் என்பதை ஆய்வு செய்து அறிக்கை சமர்ப்பித்தல்.

(ஆ) 2001–2006 ஆம் ஆண்டு வரையிலும் துவக்கப்பட்ட தனியார் ஆசிரியர் பட்டயப் பயிற்சி நிறுவனங்கள் அவை துவக்கப்படும்போது தேசிய ஆசிரியர் கல்வி குழுமம் வரையரை செய்துள்ளபடி போதிய கட்டமைப்பு வசதிகள் கொண்டிருந்தனவா என்பதையும் முறையான விதிகளின் கீழ் ஆசிரியர்/பணியாளர் நியமனங்களுக்கான அங்கீகாரம் வழங்கப்பட்டிருந்தனவா என்பதையும், இல்லையெனில், இதற்கான நிபந்தனைகளுடன் கூடிய உரிய அனுமதி பெறப்பட்டதா என்பதையும் தற்போது தனியார் ஆசிரியர் பட்டயப் பயிற்சி நிறுவனங்கள் போதிய கட்டமைப்பு வசதிகளுடன் உள்ளனவா என்பதையும் பரிசீலுத்து இதில் எவ்வாறெல்லாம் தவறுகள் நடைபெற்றிருக்கக் கூடும் என்பதை ஆய்வு செய்து அறிக்கை சமர்ப்பித்தல்.

(இ) தனியார் கல்வியியல் கல்லூரிகள்/ஆசிரியர் பட்டயப் பயிற்சி நிறுவனங்களில் மேற்கூறிய வகையில் குறைபாடுகள் இருப்பின் அவை எவ்விதம் களையப்படலாம்.

(ஈ) இனிவரும் காலங்களில் எவ்வித புகார்களுக்கும் இடமின்றி எவ்விதம் தனியார் கல்வியியல் கல்லூரிகள் / ஆசிரியர் பட்டயப் பயிற்சி நிறுவனங்கள் துவங்க அனுமதி அளித்தல் தொடர்பாக குழு பரிந்துரைத்தல்.

4. இக்குழு முதல்நிலைக் குழுவாகும். இக்குழுவானது தமது விசாரணையை முடித்து மூன்று மாதங்களுக்குள் அரசுக்கு அறிக்கை சமர்ப்பிக்கும். ஆய்வறிக்கையும் பரிந்துரையும் விரைவில் அளிக்கப்பட வேண்டும்.

5. இக்குழுவின் தலைமையிடம் பள்ளிக் கல்வி இயக்குநர் அலுவலகம், சென்னை–6 ஆகும்.

6. இவ்வாணை நிதித் துளை அ.சா.எண்.2214.குளூ.06 நாள் 21.06.2006ன் இசைவுடன் வெளியிடப்படுகிறது."

3. The writ petitioners, who are either Associations of Self-

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Financing Colleges of Education or Association of Self-Financing Private Teacher Training Institutes, want this G.O. to be quashed.

4. According to the petitioners, the State Government has no power to inspect the teaching institutions, much less appoint a Committee for this purpose. Interim stay was granted. The respondents expressed urgency to have the stay vacated since allegedly, there were many irregularities in these institutions which had given rise to complaints. The matter was taken up and all parties agreed that the writ petitions could be taken up for final disposal.

5. Mr. N.R. Chandran, learned senior counsel appearing for the petitioner in W.P. No.22161 of 2006 submitted that a bare reading of the G.O. would show that the respondents have pre-judged the issue and they are proceeding on the basis that irregularities have been committed in the commencement of the institutions. He submitted that there is total lack of jurisdiction on the part of the State to issue the G.O. The entire field is occupied by Entry 66 of List I of the Constitution of India. Learned senior counsel further submitted that the G.O. does not satisfy the test of reasonableness since it suffers from the vice of irrationality, illegality and proportionality. The G.O. smacks of official bias. There is unnecessary keenness to pursue a particular course of action. The present Government is under the impression that all the institutions which have commenced between the years 2001 and 2006 had the blessings of the previous Government and now, the institutions are caught in the cross-fire. The learned senior counsel submitted that actually, none of the institutions, which are members of the petitioner-Association, has been granted the No Objection Certificate by the previous Government. Learned senior counsel further submitted that teacher training education is 'higher education'. It trains teachers to teach children and therefore, it would come under the definition of 'higher education'. The learned senior counsel referred to the Tamil Nadu Private Colleges Regulation Act (hereinafter referred to as the State Act) and submitted that the recognition granted under the State Act ceases to have force after the National Council for Teacher Education Act (hereinafter referred to as the Central Act) came into force. After the Central Act has come into force, the State has not granted any recognition to any Teacher Training Institute. All the relevant provisions of the Act(s) were referred to.

6. Mr. G. Masilamani, learned senior counsel appaeirng for the petitioner in W.P. No.22820 of 2006 submitted that the field is fully occupied, and if the State cannot legislate touching upon the subject, the State does not have executive power either, since executive power is co-extensive with the legislative power. It was further submitted that the role of the State with regard to the institutions in question arises only at the pre-grant-of-approval stage when the institutions are required to obtain a NOC, and at the post-grant-of-approval stage, the State becomes functus officio. The

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threshold is crossed after the approval is granted and the State's role comes to an end. It is not open to the State thereafter to enquire whether the approval has been granted by the NCTE in accordance with the Act, the Rules and the Regulations. The State most certainly cannot embark on a roving enquiry into the working of the NCTE to find out what errors might have occurred in the grant of permission. When the institutions make an application for NOC, copies of all the documents that are forwarded to the NCTE for grant of approval are also sent to the State and so, the files should be with the State and they can very will look into their records to see whether the institutions had the necessary infrastructure facility. No State can act on suspicion. The learned senior counsel further submitted that the legislative powers of the Centre and the State are clearly demarcated. The G.O. is violative of Articles 245 and 246 of the Constitution of India. It lacks the authority of law and breaches the Federal structure.

7. Mr. R. Muthukumarasamy, learned senior counsel appearing for the petitioner in W.P. No.22215 of 2006 referred to Article 162 of the Constitution and submitted that the main limb of the said Article relates to List I, while the proviso thereto relates to List III. The State has been denuded of its power, both legislative and executive, in view of Entry 66 of List I and Entry 25 of List III. The field is totally occupied, leaving no room for the executive to pass any order. Even if it is taken for granted that the State has the power to fix eligibility critteria which are not in derogation of the standards of education, the State definitely cannot assess the infrastructural facility, which is an intrinsic component of standards of education and therefore, covered by Entry 66.

8. The learned Advocate General submitted that the G.O. is an aspect of legislative power. The power of inspection in the State Act and the Central Act is different. To say that the State cannot inspect and cannot make any enactment in respect of teaching insitutions or issue executive orders is to totally deprive the State of all its powers under Entry 25. The learned Advocate General referred to NCTE Regulation 6 and submitted that the State's power is traced to this Regulation and that the State cannot issue an order cancelling or revoking the NOC unless it is given the power of inspection and therefore, the power of inspection is incidental and ancillary. The learned Advocate General also submitted that the fact that all these institutions have commenced between 2001 and 2006 would show that there is a mushrooming of institutions without any regulation. The learned Advocate General further submitted that if there is uncontrolled increase in the number of teachers that pass out of these institutions, then the State will not be able to provide employment to all of them.

9. The learned counsel appearing for the NCTE submitted that all

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that the State can do is bring the complaints, if any, to the notice of the NCTE and the NCTE will take action, since it is this Council which is supreme as regards the maintenance of standards in Teacher Training Insitutes and B.Ed. Colleges.

10. The petitioners objected to the word 'mushrooming' used by the learned Advocate General. According to the petitioners, the National Educational Policy is to have a teacher for every 300 children and the need for teachers can never ceases to exist, especially since the right to primary education has been given the status of a Fundamental Right. By the judgment in St. John's Teachers Training Institute vs. Regional Director, National Council for Teacher Education [(2003) 3 S.C.C. 321], all the Teacher Training Institutes were closed and it is only after the NCTE Act came into force that Teacher Training Insitutes came into existence once more, and when the State caused delay in granting NOC to such institutions, the Supreme Court said that if the matter was to stagnate, then the NOC is deemed to have been granted. The fact that so many institutions came up between 2001 and 2006 is because no institution came into existence for a considerable period of time and once the NCTE started granting approval, the accumulated stagnation manifested itself. It was submitted that the constitutional purport of education must be understood and that right to education is a right to life. According to the petitioners, the fact that the State is not able to provide employment is not relevant insofar as the right to education is concerned. It was submitted that the mindset of the State must change. The graduates from these institutions could very well seek their appointment elsewhere or they could even give private tuition and earn their living. On the ground of inability to provide employment and without statistics to support their case, the State cannot initiate any action,much less can the State encroach upon a field which is fully occupied by the Central enactment. According to them, the provisions of the State Act cannot be invoked since these institutions have come out of the purview of the said Act. Further, the issue of mala fides has not been denied by the respondents. The G.O. does not satisfy the test of Wednesbury principle of reasonableness.

11. The relevant clauses of the National Council for Teacher Education Act, 1993 are extracted hereunder :

> "2(e) "Institution" means an institution which offers courses or training in teacher education."
>
> (i) "Recognised institution" means an institution recognised by the Council under Section 14."
>
> (l) "Teacher education" means programmes of education, research or training of persons for equippnig them to teach at pre-primary, primary, secondary and senior secondary stages in schools, and includes non-formal education, part-time education, adult education and correspondence education."

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"13. Inspection. - (1) For the purposes of ascertaining whether the recognised institutions are functioning in accordance with the provisions of this Act, the Council may cause inspection of any such institution, to be made by such persons as it may direct, and in such manner as may be prescribed.

(2) The Council shall communicate to the institution the date on which inspection under sub-section (1) is to be made and the institution shall be entitled to be associated with the inspection in such manner as may be prescribed.

(3) The Council shall communicate to the said institution, its views in regard to the results of any such inspection and may, after ascertaining the opinion of that institution, recommend to that institution the action to be taken as a result of such inspection.

(4) All communications to the institution under this section shall be made to the executive authority thereof, and the executive authority of the institution shall report to the Council the action, if any, which is proposed to be taken for the purposes of implementing any such recommendation as is referred to in sub-section (3)."

"17. Contravention of provisions of the Act and consequences thereof. - (1) Where the Regional Committee is, on its own motion or on any representation received from any person, satisfied that a recognised institution has contravened any of the provisions of this Act, or the rules, regulations, orders made or issued thereunder, or any condition subject to which recognition under sub-section (3) of section 14 or permission under sub-section (3) of section 15 was granted, it may withdraw recognition of such recognised institution, for reasons to be recorded in writing :

Provided that no such order against the recognised institution shall be passed unless a reasonable opportunity of making representation against the proposed order has been given to such recognised institution :

Provided further that the order withdrawing or refusing recognition passed by the Regional Committee shall come into force only with effect from the end of the academic session next following the date of communication of such order."

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12. Regulation 6 of the NCTE Regulations reads as hereunder :

Regulation 6

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Requirement of No Objection Certificate from the State Government/U.T. Administration

(i) Application from every institution seeking recognition to start a course or training in teacher education or from an existing institution seeking permission to start a new course or taining and/or increase in intake shall be accompanied by a No Objection Certificate (NOC) from the State or Union Territory in which the institution is located.

(ii) The endorsement of the State Government/UT Administration in regard to issue of No Objection Certificate (NOC) will be considered by the Regional Committee while taking a decision on the application for recognition.

(iii) If the NOC issued by the State Government/UT Administration does not indicate the intake, it will be for the Regional Committee to determine the intake taking into account the infrastructural and instructional facilities available in the institution and other relevant provisions in the Norms and Standards applicable to the relevant teacher training programme.

(iv) The NOC issued by the State Government/UT Administration will remain valid till such time the State Government/UT Administration wigthdraws/cancels it.

(v) The NOC will be deemed to have lapsed if the institution fails to get recognition within three years from the date of its issue.

(vi) Requirement of NOC shall not apply to Government Institutions.

(vii) Requirement for NOC shall not apply to University Department for taking up innovative teacher education programme for a maximum intake of 50 (fifty only). The question as to whether a programme is innovative will be decided by the concerned Regional Committee.

13. The latest judgment of the Supreme Court in J.T. 2006 (4) S.C. 201 [State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya] answers almost all the questions raised in the present case. In that case, the State of Maharashtra took a policy decision not to grant NOC to any institution for starting new B.Ed. College for the Academic Year 2005-06. A Public Trust, which desired to impart education for B.Ed. Course, applied to the NCTE. The NCTE approved it and granted recognition for the academic Year 2005-06. The institution applied to the State for grant of permission to include its name in the Central Admission Process. There was no reply. Therefore, a writ petition was filed and in the affidavit filed by the State Authorities, it was contended :

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"It was only the State Government which could correctly assess and know the extent of requirement of trained manpower and supply of trained teachers keeping in view the requirements, change of occupation and demand of such teachers. The input from the State Government through NOC was thus vital for enabling NCTE to exercise its powers and discharge its functions properly and without involvement of the State Government and availability of necessary input by the State Government, NCTE could not grant permission. ..... "

In that case, on behalf of the NCTE, it was submitted before the Supreme Court that the role played by the State Government is only consultative in nature and once the State is consulted, its function comes to an end. The Supreme Court relied upon J.T. 1995 (3) S.C. 136 [State of Tamil Nadu vs. Adhiyaman Educational & Research Institute] and observed as follows :

"We may, however, state that NCTE and contesting respondents are right in relying upon a decision of this Court in Adhiyaman, referred to earlier. In Adhiyaman, this Court was called upon to consider the constitutional validity of some of the provisions of the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Rules made thereunder as also the Madras University Act, 1923 and the Rules made thereunder. It was contended that certain provisions of the State Acts were inconsistent with the provisions of the Central Act (All India Council for Technical Education Act, 1987) and hence were inoperative. This Court upheld the contention of the petitioners and ruled that State Legislature could not enforce an Act if it is inconsistent with the Central Act and to the extent of such inconsistency, the Central Act would operate and State Acts would be inoperative."

The Supreme Court observed that the law is well settled :

"From the above decisions, in our judgment, the law appears to be very well settled. So far as co-ordination and determination of standards for higher education or research in scientific and technical institutions are concerned, the subject is exclusively covered by Entry 66 of List I of Schedule VII to the Constitution and State has no power to encroach upon the legislative power of Parliament. It is only when the subject is covered by Entry 25 of List III of Schedule VII to the Constitution that there is a concurrent power of Parliament as well as State Legislatures and appropriate Act can be made by the State Legislature subject to limitations and restrictions under the Constitution.

In the instant case, admittedly, Parliament has enacted 1993 Act, which is in force. The Preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and

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coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education system and for matters connected therewith. With a view to achieving that object, National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power by making appropriate law. In the circumstances, it is not open to State Government to refuse permission relying on a State Act or on 'policy consideration'."

> "..... It would be unthinkable that if State Legislature could not have encroached upon a field occupied by Parliament, it could still exercise power by executive fiat by refusing permission under the 'policy consideration'. The contention of the State Government, therefore, has to be negatived."

Therefore, virtually all the questions raised in this case have been answered in the above decision in favour of the petitioners.

14. In (2003) 3 S.C.C. 321 [St. Johns Teachers Training Institute vs. Regional Director, National Council for Teacher Education], the Supreme Court considered the constitutionality of Regulations 5(e) and (f) framed under the NCTE Act, and while upholding the constitutionality of these Regulations, the Supreme Court held that the State Government does not have an arbitrary and unchannelled power, but has to confine itself to the guidelines issued by the NCTE for the grant of NOC.

15. (1995) 4 S.C.C. 104 = J.T. 1995 (3) S.C. 136 [State of Tamil Nadu vs. Adhiyaman Educational & Research Institute], was concerned with Engineering Colleges in the State of Tamil Nadu. In that case too, the State Government appointed a High Power Committee, as in this case, to visit Self-Financing Engineering Colleges and to make an assessment of their functioning. The High Power Committee filed a report. The question involved in that case is the conflict between the AICTE Act (the Central Act in that case) on the one hand and the Tamil Nadu Private Colleges Regulation Act (the State Act) on the other. Therefore, Adhiyaman's case, and in particular, the following extract, is specifically relevant to the present case :

> "..... Hence, on the subjects covered by this statute, the State could not make a law under Entry 11 of List II prior to Forty-second Amendment nor can it make a law under Entry 25 of List III after the Forty-second Amendment. If there was any such existing law immediately before the commencement of the Constitution within the meaning of

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Article 372 of the Constitution, as the Madras University Act, 1923, on the enactment of the present Central Act, the provisions of the said law if repugnant to the provisions of the Central Act would stand impliedly repealed to the extent of repugnancy. Such repugnancy would have to be adjudged on the basis of the tests which are applied for adjudging repugnancy under Article 254 of the Constitution."

After examining the provisions of the State Act in detail, including Section 35, which deals with the power of inspection, the Supreme Court held as follows :

"..... What is further, the primary object of the Central Act, as discussed earlier, is to provide for the establishment of an All India Council for Technical Education with a view, among others, to plan and coordinate the development of technical education system throughout the country and to promote the qualitative improvement of such education and to regulate and properly maintain the norms and standards in the technical education system which is a subject within the exclusive legislative field of the Central Government as is clear from Entry 66 of the Union List in the Seventh Schedule. All the other provisions of the Act have been made in furtherance of the said objectives. They can also be deemed to have been enacted under Entry 25 of List III. This being so, the provisions of the State Act which impinge upon the provisions of the Central Act are void and, therefore, unenforceable. It is for these reasons that the appointment of the High Power Committee by the State Government to inspect the respondent-Trust was void as has been rightly held by the High Court."

Therefore, the State cannot draw upon itself the power under Section 35 of the State Act to conduct inspection so as to encroach upon the Council's power given under the Central Act.

16. In Writ Petition Nos.4535 of 2004 and 276 of 2005 - Order dated 21.1.2006 [Dharma Medical and Research Charitable Trust vs. Government of India], a question arose whether the University was right in restricting the intake capacity of the petitioner/Sidha Medical College inspite of the fact that the Central Council had accorded permission for an intake of 40 students. The First Bench of this Court allowed the writ petition, directing the University to enrol and register the names of the petitioner/students subject to their fulfillment of the eligibility conditions, provided they are within the sanctioned intake capacity of 40 holding thus :

"It would thus be clear that in enacting Section 13A, Parliament has made a complete and exhaustive provision covering the entire field for establishing a new medical college and for its continuance. No further scope is left for the operation of the State Legislation in the said field

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which is fully covered by the law made by the Parliament.

Therefore, it is clear that the field is fully occupied by the Central Act, since the scope of the NCTE Act, the AICTE Act, the Medical Council of India Act and the Dentists Act is almost the same.

17. In 1997 Writ L.R. 647 [of Managements of Private Colleges vs. State of Tamil Nadu], what came under challenge was a G.O. whereunder the State Government directed that 50% of the seats in all the Unaided Colleges shall be filled up as per the procedure contemplated in the G.O. and for that purpose, a Selection Committee was also constituted. The Division Bench considered the matter in the light of Article 162 of the Constitution and held that the State Government overstepped its power in issuing the impugned G.O. under Article 162, since such power cannot be exercised over the subject occupied by a law passed by the competent legislature.

18. In I.L.R. 1996-1 Madras 1007 [V. Chandra vs. Government of Tamil Nadu], it was held as follows :

> "..... It is the settled position of law that the executive power under Article 162 of the Constitution is not available in respect of the subject which is already covered by the legislation. In other words, a field covered by the enactment which is known as covered field cannot be meddled with by the executive in the purported exercise of their power under Article 162 of the Constitution. This has been specifically provided for with a view to ensure that the State also is not above the Rule of law and above the provisions contained in the Constitution."

In 2002 Writ L.R. 898 [M. Aarthi vs. State of Tamil Nadu], it was held thus :

> "The executive power of the State under Article 162 of the Constitution is co-extensive with the legislative power and when the field of law is occupied by a legislative Act, the exercise of executive power is not available."

In 1997 (1) C.T.C. 129 [S. Arunachalam vs. State of Tamil Nadu], it was held thus :

> "Thus, the State has tried to exercise its executive power in respect of the matter, which is covered by the Registration Act and the Rules framed thereunder. There is no dispute that the legislative power of the State extends to all matters in respect of which the State Legislature has power to make laws. But from this, it does not follow that the executive power of the State can be exercised in respect of the matter which is covered by the law enacted by the competent Legislature and the Rules framed thereunder. The law so enacted by the competent Legislature and the rules framed thereunder are to be scrupulously followed by all

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concerned including the State Government. Thus the executive power of the State cannot be exercised over the subject occupied by law passed by the competent Legislature which is otherwise known as Theory of Occupied Field."

Thus, it is clear that the power to inspect is given only to the NCTE under the NCTE Act, and as far as teaching institutions are concerned, the role of the Council cannot be encroached upon by an executive fiat, when even the State's legislative power is limited. So, the G.O. violates Article 162 of the Constitution.

19. The manner in which all the institutions have been dealt with at one stroke itself makes the G.O. vulnerable to attack. No material has been produced to show that the infrastructural facilities in all the institutions were defective. The source from which the State draws its power to inspect or to "find facts", as it is euphemistically put, is shrouded in doubt. In Writ Petition Nos.38316 of 2005 etc. batch - Order dated 13.7.2006 [Sathyabama Institute of Science & Technology (Deemed to be University) vs. Union of India, rep. by its Secretary, Ministry Human Resources Development], the power of inspection of the AICTE with regard to Deemed-to-be-Universities was objected to by the Deemed-to-be-Universities thus :

> "..... It is also submitted that the autonomy of private professional and technical institutions has been recognised by the Supreme Court and it cannot be interfered with unnecessarily. The right of supervision or inspection of such institutions in order to prevent maladministration cannot be converted into one of continuous policing and surveillance. ..."

It was held that the AICTE does not have any such absolute right of inspection. Section 11 of the AICTE Act provides for inspection by the AICTE and Section 13 of the UGC Act provides for inspection by the UGC. Even where the AICTE had been specifically given the power to inspect, it was held thus :

> "..... That the AICTE has the power to inspect is not denied, but the AICTE must bear in mind the manner in which it exercises the power. Both UGC and AICTE have a common object, i.e. Maintaining standards of excellence in education, but the UGC has primacy over AICTE, since even if the AICTE discovers the shortcomings of a deemed to be university, it has no further or direct control, nor is there any scope for AICTE initiating any direct action against the said deemed to be university, it can only bring these defects to the notice of UGC for further action. ....."

In the present case, the role of the State is weaker, in that no explicit power of inspection has been granted under any of the Rules

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or Regulations. In this case, the question is moot whether even individually, the State Government could have proceeded to inspect any institution, but it most certainly could not list all the institutions in Tamil Nadu and proceed to inspect them, tarring them en masse with the same brush.

20. Giving employment is one of the purposes for establishing Teacher Training Institutes and not the only end of it. The Government also does not and cannot guarantee that all the Teachers who come out of a teaching institution will be given employment. A candidate who is qualified to be a teacher, he/she also becomes eligible to take tuitions and get self-employment. Courts can take judicial notice of the fact that almost all students take tuitions. School education by itself may not arm the students with necessary knowledge. The students who come out of the Teacher Taining Course can fulfil that requirement. The students may secure employments in other State too. The observations to this effect are found in Writ Petition Nos.5863 of 1998 etc. batch - Order dated 11.5.1999 [Immanuvel Teacher Training Institute vs. Regional Director, Southern Regional Committee, National Council for Teacher Education]. This answers the State's objection that it will be difficult to provide employment for all the students.

21. The decisions in which the Supreme Court has held that the State has the power to lay down criteria so long as they do not in any way dilute or entrench upon the standards laid down by the Central Act, as in (1999) 7 S.C.C. 120 [Dr. Preeti Srivasatava vs. State of Madhya Pradesh] and 2004 (2) C.T.C. 227 [State of Tamil Nadu vs. S.V. Bratheep], cannot help the respondents. The infrastructural facilities relate to standards of education and therefore, they come totally within Entry 66. In fact, the reason why the Supreme Court has held in both the above cases that the State cannot lower the eligibility criteria is because that would indirectly affect the standards of education, which comes totally under Entry 66. Any exercise of legislative or executive power which affects standards of education is to be done only by the Union, be it Entry 66 or Entry 25. It is, as observed in Sant Dnyaneshwar's case (supra) totally and fully occupied.

22. The G.O. is really unhappily worded. The words, "eilbgw;w jtWfis" clearly indicate that the Government has come to the conclusion that irregularities had in fact arisen, but for this, there is no material. Of course, in the D.O. Letter dated 29.6.2006, it is stated that the Committee has been appointed "to enquire into the deficiencies, if any", but that is not how the impugned G.O. reads.

23. The learned Advocate General referred to 2005 (3) C.T.C. 555 [Government of Andhra Pradesh vs. J.B. Educational Society], wherein it has been held thus :

"The educational needs of the locality are to be

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ascertained and determined by the State. Having regard to the regulations framed under the AICTE Act, the representatives of the State have to be included in the ultimate decision making process and having regard to the provisions of the Act, the Writ Petitioners would not in any way be prejudiced by such provisions in the A.P. Act. Moreover, the decision, if any, taken by the State authorities under Section 20(3)(a)(i), would be subject to judicial review and we do not think that the State could make any irrational decision about granting permission. Hence, we hold that Section 20(3)(a)(i) is not in any way repugnant to Section 10 of AICTE Act and it is constitutionally valid."

The learned Advocate General also referred to paragraph 4 in of the 'sample orders issued by the NCTE granting recognition', which reads thus :

"Further, the permission is subject to the fulfillment of all such other requirements as may be prescribed by other regulatory bodies like the State Government etc."

It was, therefore, submitted that the State has an important role to play in this area.

24. To the question whether the State Government has in fact prescribed any conditions to be fulfilled by Teacher Training Institutes before they seek permission from the NCTE, the answer was in the negative.

25. In the year 2005, the Amended Regulations, viz. the National Council for Teacher Education (Recognition Norms & Procedure) Regulations, 2005 came into force and Regulation 7(3) thereof reads thus :

"On receipt of the communication, the State Government/UT Administration concerned shall furnish its recommendations on the applications to the office of the Regional Committee concerned of the National Council for Teacher Education within 60 days from receipt. If the recommendation is negative, the State Government/UT Administration shall provide detailed reasons/grounds thereof, which could be taken into consideration by the Regional Committee concerned while deciding the application. If no communication is receoved from the State Government/UT Administration within the stipulated 60 days, it shall be presumed that the State Government/UT Administration concerned has no recommendation to make."

So, the role played by the State is really limited, and even this can be taken away if the Central Act is amended.

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26. When the power of the State to appoint a Committee itself is extremely doubtful, the Committee so appointed by the State has even lesser power to delegate its role to a Regional Committee. Section 17 of the NCTE Act deals with the powers of the NCTE to take action either by itself or on receipt of a complaint from any person. If the State was bona fide interested in improving the standards of Teacher Training Institutes, in order to ensure that there is no slackening in the standards, it may, in specific cases of irregularity, bring the same to the notice of the NCTE, which may act upon it thereafter. Without there being specific provisions regarding the power of inspection, the State cannot interfere with the autonomy of the institutions which have been established as per the provisions of the Central Act.

27. The learned Advocate General posed a query as to why the institutions should fight shy of being inspected if their houses were in order. It is not a question of being reluctant to face the inspection. It is a question of subjecting oneself to inspection by an authority without jurisdiction. When the appointment of the High Level Committee itself is without any constitutional competence, is totally without jurisdiction and is clearly arbitrary, no institution, however flawless its infrastructural facilities may be, is bound to submit itself for the inspection. The duty to submit oneself for inspection would arise only when there is the power to carry out such inspection. The State is unable to show that it has any such power. All that it wants the Court to do is to presume the existence of such power from Regulation 6 of the State Act, which gives the State, the right to withdraw or cancel the permission. There is nothing in the said rule for such presumption. Moreover, once permission is granted by the NCTE, which is the supreme authority, then the State has no role to play thereafter, except may be, to bring to the notice of the Council in specific cases where there are complaints. The State also sends its representatives to be part of the Regional Committee as well as the Executive Committee and they shall perform their duties in a responsible manner, as observed by the Division Bench in 2005 Writ L.R. 368 [Bharathidasan University vs. Dhanalakshmi Srinivasan], where it was held that the State Representative in the Regional Committee may very well project the local need and demand for teacher education, employment potental and any other relevant factor.

28. Ostensibly, the State Government only wants to ensure that deficiencies in the infrastructural facilities have not been overlooked in the grant of approval to the institutions listed in the Annexure to the G.O. or the subsequent communication. When the State Government's role in the entire scheme of things with regard to grant of approval is limited to issuing a NOC vide Regulation 6 of the State Act and it is only the Central Council which satisfies itself with regard to the infrastructural facilities by making an inspection prior to grant of approval, and the final decision of the NCTE does not

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depend upon the grant or rejection of NOC, as we have seen in St John's case (supra), I am unable to trace the genesis of the State's power for issuing this G.O. after the institutions have come up. The State Government is given no scope to act as a supervisory body to check whether there has been any irregularity on the part of the NCTE in the grant of approval. The executive action is totally without jurisdiction and is a trespass into the field occupied by the Central legislation. Repeatedly, the Supreme Court has held in Adhiyaman's case (supra), Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust vs. State of Tamil Nadu [(1996) 3 S.C.C. 15] and Jaya Gokul's case (supra) that the power of the Central Council is supreme and any exercise of power by the State under Entry 25 is limited. Intrinsically, the area of operation of the Central Council as per the Central legislation is almost identical in all these Acts, be it the AICTE Act, the Medical Council Act, the Dental Council Act or the NCTE Act and therefore, what applies in the case of any one of these applies equally to the NCTE. In Adhiyaman's case, the State Act has also been considered, and it has been held that the provisions of the State Act insofar as they impinge upon the AICTE Act are void. Here too, the same State Act is referred to, viz. Tamil Nadu Private Colleges Regulation Act. Therefore, the ratio laid down in that case will apply on all fours here.

29. It is clear that the State Government is reluctant to acknowledge its limited role in the field of education in view of the scope of Entry 66 of List I and Entry 25 of List III. This has given rise to these writ petitions and the Supreme Court has laid down the law regarding the role of the State. The power which the State Government has assumed upon itself while issuing the said G.O. cannot be recognised since it is in violation of the Centre-State balance. In fact, even the power to grant NOC under Regulation 6 of the State Act is a power granted by the Central Act. The power of the State to grant NOC or as per the amended Regulation or to make recommendation is not a power traceable to a State legislation, but the power granted under the Central legislation. Tomorrow, the NCTE Act may very well be amended, doing away with the requirement of NOC. The secondary role played by the State is expressed in St. John's case as follows :

> "The role of the State Government is certainly important for supplying the requisite data which is essential for formation of opinion by the Regional Committee while taking decision under sub-section (3) of Section 14 of the Act."

30. A Division Bench of this Court in 2003 (3) C.T.C. 1 [H.E.T.C. Educational Society vs. State of Tamil Nadu], while dealing with the requirement of Essentiality Certificate in the Dentist Act, succinctly summed up the position as follows :

> "Government of States/Union Territories must reconcile themselves to the fact that professional education in the

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fields of Dentistry, Medicine and Engineering being covered by the Dentists Act, Indian Medical Council Act and AICTE Act, their role is a very limited one. While considering the application for grant of certificate regarding desirability and feasibility of the location, their approach should not be a negative one of seeking to find some reason or other to reject the request.

The State Governments, who for want of resources are unable to establish new professional colleges or increase capacity in existing ones, should not, by forming any preconceived notions come in the way of new institution being established by those who do not seek Government funding and are eligible to establish new institutions under the qualifying criteria prescribed by the Professional bodies under those enactments, and are able to satisfy the other criteria prescribed by the Dental or Medical Council.

They should also remind themselves of the fact that the right to establish and run educational institution is a fundamental righgt as held by the Eleven Judge Bench of the Supreme Court in the case of T.M.A. Pai Foundation vs. State of Karnataka [(2002) 8 S.C.C. 481]. The exercise of such a right is not to be obstructed except on permissible legitimate grounds and in the public interest."

31. The power to co-ordinate and determine standards in institutions of higher education is clearly covered by Entry 66 of List. In (2002) 8 S.C.C. 228 [Union of India vs. Shah Goverdhan L.Kabra Teacher College], the question that arose for consideration was whether the impugned legislation can be held to be a law dealing with coordinated development of education system within Entry 66 of List I of the Seventh Schedule or it is a law dealing with the service conditions of an employee under the State Government. The fields of legislation under three wings of the Constitution are defined and the legislative power is engrafted under Article 246 and when a law is attacked as being ultra vires, what is required to be ascertained is the true character. The question of invasion in the other field is to be determined not by degree, but by substance. In this view, the Supreme Court held that the power to coordinate does not mean the power to evaluate, but it means to harmonise and secure relationship for concerted action. Therefore, when the NCTE Act is essentially a legislation by the Centre under Entry 66 for the purpose of coordination of standards of higher education, Section 17(4) only provides the consequences that would follow if an institution contravenes the Act, though the ultimate result may be that an unqualified teacher as per the Act will not get employment in such institution. The Supreme Court categorically held that by no stretch of imagination can the impugned Section be construed to mean a law dealing with employment. The Supreme Court observed thus :

"In the aforesaid premises, the conclusion of the High Court that Section 17(4) is ultra vires being beyond the

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competence of the Union Legislature cannot be sustained and the said conclusion is accordingly set aside. On examining the statute as a whole and on scrutiny of the object and scope of the statute, we have no manner of doubt that even sub-section (4) of Section 17 is very much a law dealing with the coordination and determination of standards in institutions for higher education coming within Entry 66 of List I of the Seventh Schedule and, thus, the Union Legislature did have the competence for enacting the said provision."

32. The learned Advocate General submitted that if the portions of the G.O. could be upheld applying the doctrine of severability, at least those portions could be saved and the formation of the Committee should not be set at naught. Since the G.O., as stated earlier, is meant for the purpose of detecting the irregularities that have crept in the commencement of institutions, the G.O. has to be quashed as a whole. The G.O. appears to indicate that the Committee has been formed on the premise that there are irregularities in all the institutions and the Committee should go about finding out what the irregularities are. So, it is not possible to save or severe any portion of the G.O., since the basis on which the Committee has been formed is arbitrary, unreasonable and unsustainable.

33. Having said that, I would like to refer to the manner in which the NCTE is functioning. Very often, institutes come before this Court praying for a mandamus only to direct the NCTE to pass orders on their proposals. It is difficult to understand why the NCTE is unable to process the applications within a reasonable time so that the institutions which comply with all the requirements are given recognition and they can admit students sufficiently early in the academic year, for which they seek the permission. When a batch of writ petitions praying for orders with regard to lapsed seats/approval of staff list came up for hearing, the learned Special Government Pleader submitted that it was not possible to approve the staff list in certain cases where two or three institutions had on their staff rolls, the same teachers. This is a grave irregularity. In yet another matter, recognition was given in March, 2006 for the Academic Year 2005-06. It is beyond comprehension how thereafter the institution can admit students and train them adequately so that these students, in turn, are able to teach children properly. Teacher Training Institutes train students to teach children and their training should have no deficiency. At a very tender age, children are entrusted to them, so not only the intellectual growth, but the psychological and emotional growth also depends on these teachers. The NCTE is entrusted with the responsible task of ensuring the standards of teacher teaching institutes. The Supreme Court decisions cited above clearly show that the entire field is occupied by the Central Act, and the State's role is clearly demarcated and only subject to the NCTE's power. If the NCTE does not discharge its

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responsibility as it should, we would not only be letting loose inadequately trained teachers, but the formative years of the children of our country would be left in unsafe hands. The NCTE is probably burdened with more applications than it can cope. There is, no doubt, great pressure on the NCTE authorities. But, while the NCTE should not delay grant of recognition to a deserving institution, it should make sure that purely commercial adventurers do not come on to the scene, and the noble goal of training teachers to teach the young ones is not lost sight of. It is only because of what I have observed in many cases that have come up before me involving NCTE that I am compelled to make these comments, while upholding NCTE's supremacy with regard to maintenance of standards in teaching institutes.

34. For all the foregoing reasons, the writ petitions are allowed. However, there will be no order as to costs. Consequently, M.P. Nos.2, 2, 2, 1 & 2, 1, 2 & 2 of 2006 in W.P. Nos.22161, 22215, 22820, 24502, 24629 and 24870 of 2006 respectively are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ab

To

1. The Secretary to Government,
   School Education Department,
   Government of Tamil Nadu,
   Fort St. George, Chennai-9.

2. The Secretary to Government,
   Higher Education Department,
   Government of Tamil Nadu,
   Fort St. George, Chennai-9.

3. The Member Secretary,
   National Council for Teacher Education,
   Hans Bhavan, Wing II,
   New Delhi-110 002.

4. The Regional Director,
   National Council for Teacher Education,
   Southern Regional Committee,
   First Floor, C.S.D. Complex,
   H.M.T. Township, Bangalore-31.

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5. The Director of Collegiate Education,
Government of Tamil Nadu,
D.P.I. Campus, Chennai-6.

6. The Director of Teacher Education,
Research & Training,
Government of Tamil Nadu,
D.P.I. Campus, Chennai-6.

4 cc to Govt. Pleader, Sr. 37266, 37271, 37133, 37134
1 cc to Mr.P.Chandrasekaran, Advocate, Sr. 37194
1 cc to Mr.P.Chandrasekaran, Advocate, Sr. 37195
1 cc to Mr.V. Sanjeevi, Advocate, Sr. 37331
1 cc to Mr.R. Suresh Kumar, Advocate, Sr. 37079
1 cc to MR.S. Udayakumar, SCGSC, Sr. 37202
1 cc to Mr.R. Suresh Kumar, Advocate, Sr. 37082
1 cc to Mr.R. Suresh Kumar, Advocate, Sr. 37081

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